

## **EXHIBIT 3**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 NIRVANA, L.L.C., : CASE NO. 2:18-CV-  
5 Plaintiff, : 10743-JAK-SK  
:

6 vs. :  
:

7 MARC JACOBS INTERNATIONAL :  
L.L.C., et al., :  
8 Defendants. :  
:

9 MARC JACOBS INTERNATIONAL :  
L.L.C., et al., :

10 Counterclaim :  
Plaintiffs, :

11 vs. :  
:

12 NIRVANA, L.L.C., :  
Counterclaim :  
13 Defendant. :  
14

- - -

15 REMOTE VIDEOTAPED DEPOSITION OF ROBERT ANDRES FISHER

16 Thursday, August 27, 2020

17 - - -  
18  
19  
20  
21

22 - - -

23 GOLKOW LITIGATION SERVICES  
877.370.3377 ph | 971.591.5672 Fax  
24 deps@golkow.com  
25

1 Remote videotaped stenographic deposition of  
2 ROBERT ANDRES FISHER, conducted at the location of the  
3 witness in Woodland Hills, California, commencing at  
4 approximately 10:03 a.m., on the above date, before  
5 Rosemary Locklear, a Registered Professional Reporter,  
6 Certified Realtime Reporter and California CSR (#13969).

7

8

- - -

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES: (All appearances via remote technology)

2

3 KENDALL BRILL & KELLY, L.L.P.

BY: BERT H. DEIXLER, ESQUIRE

4 bdeixler@kbbkfirm.com

BY: SARAH E. MOSES, ESQUIRE

5 smoses@kbbkfirm.com

10100 Santa Monica Boulevard, Suite 1725

6 Los Angeles, California 90067

(310) 566-2700

7 and

RIMON, P.C.

8 BY: MARK S. LEE, ESQUIRE

mark.lee@rimonlaw.com

9 BY: JILL H. BERLINER, ESQUIRE

jill.berliner@rimonlaw.com

10 2029 Century Park East, Suite 400N

Los Angeles, California 90067

11 (213) 375-3811

Appearing on behalf of the Plaintiff and

12 Counterclaim Defendant

13

14 KELLEY DRYE & WARREN, L.L.P.

BY: KERIANNE LOSIER, ESQUIRE

15 klosier@kelleydrye.com

BY: MICHAEL ZINNA, ESQUIRE

16 mzinna@kelleydrye.com

BY: STEPHANIE A. GROB, ESQUIRE

17 sgrob@kelleydrye.com

101 Park Avenue

18 New York, New York 10178

(212) 808-7800

19 Appearing on behalf of the Defendant and

Counterclaim Plaintiff

20

21

22

23

24

25



1 APPEARANCES: (Continued)

2

3 MODO LAW

BY: INGE DE BRUYN, ESQUIRE

4 inge.debruyn@modo-law.com

4218 Via Padova

5 Claremont, California 91711

(424) 832-6118

6 Appearing on behalf of the Intervenor, Robert  
Fisher

7

8

- - -

9

10

ALSO PRESENT:

11

12

JOSEPH MOURGOS, Video Operator

13

GINA VELDMAN, Trial Technologist

14

MICHAEL MEISEL

15

16

- - -

17

18

19

20

21

22

23

24

25

1	I N D E X		
2			
3	WITNESS		PAGE
4			
5	ROBERT ANDRES FISHER		
6			
7	By Mr. Zinna		10
8			
9	By Mr. Deixler		149
10			
11	- - -		
12			
13	EXHIBIT INDEX		
14	NUMBER		MARKED
15			
16	1	3-page document dated 8/19/20	14
17		entitled "Second Amended Notice of Subpoena to Testify at a Deposition of Robert Fisher," plus attachments	
18			
19	2	16-page document dated	18
20		12/28/18 entitled "Complaint," plus attachments	
21	3	1-page color photo dated	21
22		3/11/93	
23	4	1-page copy of Page 3 of	22
24		Complaint	
25			

1	EXHIBIT INDEX (Continued)		
2	NUMBER		MARKED
3			
4	5	3-page document dated 8/10/20 entitled "Declaration of Robert Fisher in Support of Motion for Leave to Intervene Pursuant to Fed. R. Civ. P. 24"	23
5			
6			
7			
8	6	2-page color photos	43
9			
10	7	4-page color photos	49
11			
12	8	1-page color photos	55
13			
14	9	2-page color photos	67
15			
16	10	2-page email dated 11/27/19 to Robert Fisher from Mike Wilkinson	80
17			
18	11	4-page email dated 11/27/19 to Michael Meisel from Robert Fisher	82
19			
20	12	2-page color photos	105
21			
22	13	1-page color photo, MJI-Nirvana 000330	111
23	14	2-page color photos	116
24	15	1-page letter dated 3/9/93 to Register of Copyrights from Deborah L. Benson, plus attachments, NIRVANA-000041 - NIRVANA-000044	118
25			
	16	1-page document dated 8/10/20 entitled "Certificate of Registration"	122
	17	2-page color photos	125

1	EXHIBIT INDEX (Continued)		
2	NUMBER		MARKED
3			
4	18	1-page document entitled "Geffen Records Packaging Budget"	129
5			
6	19	26-page document dated 8/11/21 entitled "[Proposed] Complaint-In-Intervention for Declaratory Relief; Injunctive Relief; Breach of License; Copyright Infringement; and Cancellation of Federal Trademark Registration"	133
7			
8			
9			
10			
	20	17-page document dated 8/10/20 entitled "Memorandum of Points and Authorities in Support of Motion to Intervene"	135
11			
12			
13	21	1-page document dated 1/22/20 entitled "Acknowledgement," NIRVANA-001840	138
14			
15	22	3-page document dated 10/11/19 entitled "Acknowledgement," NIRVANA-000328 - NIRVANA-000330	140
16			
17			
	200	1-page color photos	170
18			
	201	1-page document entitled "Instagram"	198
19			
20	202	1-page document entitled "Instagram"	200
21			
	203	1-page document entitled "Instagram"	201
22			
23	204	1-page document entitled "Instagram"	203
24			
25			

1	EXHIBIT INDEX (Continued)		
2	NUMBER		MARKED
3			
4	205	1-page color photo, NIRVANA-114261	207
5			
6			
7	(Exhibits retained by the court reporter and attached to transcript.)		
8			
9		- - -	
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 VIDEO OPERATOR: We are now on the record.

2 My name is Joseph Mourgos. I am a videographer  
3 for Golkow Litigation Services.

4 Today's date is August 27, 2020, and the time on  
5 the video monitor is 10:03 a.m., Pacific time.

6 This remote video deposition is being held in  
7 the matter of Nirvana, L.L.C., versus Marc Jacobs  
8 International, L.L.C., et al., and related counterclaim,  
9 for the United States District Court, Central District  
10 of California.

11 The deponent is Robert Fisher.

12 All parties to this deposition are appearing  
13 remotely and have agreed to the witness being sworn in  
14 remotely.

15 Due to the nature of remote reporting, please  
16 pause briefly before speaking to ensure all parties are  
17 heard completely.

18 Will counsel please identify yourselves for the  
19 record.

20 MR. ZINNA: Michael Zinna --

21 MR. DEIXLER: Bert Deixler -- Bert Deixler,  
22 Kendall Brill & Kelly, with Sarah Moses, on behalf of  
23 the plaintiff.

24 Good morning.

25 MR. ZINNA: And this is Michael Zinna from

1 Kelley Drye & Warren with Kerianne Losier and Stephanie  
2 Grob on behalf of defendants.

3 MS. DE BRUYN: This is Inge De Bruyn on behalf  
4 of the deponent, Robert Fisher.

5 VIDEO OPERATOR: Is that it?

6 And will our tech please identify yourself.

7 TRIAL TECHNOLOGIST: This is Gina Veldman.

8 VIDEO OPERATOR: Thank you.

9 The court reporter today is Rosemary Locklear,  
10 and she will now administer the oath.

11 ROBERT ANDRES FISHER, having been duly sworn,  
12 was examined and testified as follows:

13 VIDEO OPERATOR: Please begin.

14 EXAMINATION

15 BY MR. ZINNA:

16 Q. Good morning, Mr. Fisher.

17 A. Good morning.

18 Q. As I mentioned, I'm Mike Zinna. My firm  
19 represents Marc Jacobs International; Saks,  
20 Incorporated; and Neiman Marcus Group in this  
21 litigation.

22 I hope you're doing okay this morning.

23 A. I'm doing well. Thank you.

24 Q. And we're here today for the case titled  
25 Nirvana, L.L.C., versus Marc Jacobs International, et

1 Pettin, Baby Kissin, Corporate Rock Whores, and the  
2 handwriting that you said is yours at the bottom where  
3 it says, "Nirvana Tee Shirt (Back)," do you see a little  
4 logo there?

5 A. Yes.

6 Q. Do you know what that is?

7 A. That's the DGC logo, the other offshoot of  
8 Geffen. Geffen Record Company or DGC.

9 Q. And did you create this document?

10 A. Yes.

11 Q. And why would you have put the DGC logo there?

12 A. I believe because this version of the shirt,  
13 since DGC was giving them out, they asked to have their  
14 logo on it.

15 Q. Okay.

16 MR. ZINNA: And if we go to the next page,  
17 please.

18 BY MR. ZINNA:

19 Q. Do you know what this document is?

20 A. This looks like a quote for the actual printing  
21 of the shirts from a printer.

22 Q. And do you see that it's dated July 26th, 1991?

23 A. Yes.

24 Q. So does that help refresh your recollection  
25 about when the smiley would have been created? Would it



1 have to have been at least by this date?

2 A. Yeah. It would have been just before this a  
3 bit.

4 Q. And why was the smiley face originally created?  
5 Like, what was the original purpose for you drawing it?

6 A. Well, what I remember is that Nirvana, being  
7 management or band, but which I -- they wanted -- they  
8 had an old tour shirt that was -- it had the writing on  
9 the back that was kind of explicit.

10 And they wanted to make a new shirt that they  
11 could sell and -- you know, like a new promo shirt they  
12 could promote themselves with at -- you know, sell on --  
13 in concerts, and possibly in retail, and stuff like  
14 that.

15 Q. And -- but -- so did you draw it for some other  
16 purpose, but it ended up being used on the T-shirt Or  
17 are you draw --

18 A. Well, I originally drew it for a T-shirt for  
19 Nirvana, and then, I guess, this -- the -- this  
20 department saw it and wanted to use it for one of their,  
21 like, special promos.

22 Q. Okay. Had you drawn smiley faces prior to  
23 drawing the one we've been talking about here?

24 A. Yes.

25 Q. Prior to your work with Geffen?

1 MR. ZINNA: If you could, Gina, please pull up  
2 Exhibit 4 and Exhibit 6, just for ease of reference.

3 BY MR. ZINNA:

4 Q. So turning back to the smiley face that's shown  
5 in Exhibit 4 and Exhibit 6, at the time that you created  
6 these, who knew that you -- who knew that you created  
7 this smiley face?

8 A. At the time?

9 Q. Yes.

10 A. I would assume Nirvana would, since I gave it to  
11 them or supplied it to them.

12 Q. When did you supply it to them?

13 A. It would have been -- I don't recall the date on  
14 that other order sheet, but it would have been right  
15 before that, by a week or so, probably. They needed  
16 to -- they would have wanted to approve it for their  
17 shirts.

18 MR. ZINNA: So, Gina, can you just pull  
19 Exhibit 7 up again quickly just to establish that date,  
20 which I'll represent to you is July 26th, 1991, but I  
21 just want you to see that.

22 Page 4, please.

23 Okay.

24 BY MR. ZINNA:

25 Q. So then your testimony, Mr. Fisher, is that you

1 would have delivered this to Nirvana before this date?

2 A. Yes.

3 Q. And you said "them."

4 Who at Nirvana or representing Nirvana would you  
5 have delivered it to?

6 A. Well, back then, I was mainly -- my main contact  
7 was John Silva. And he had another person in his office  
8 that I remember dealing with, but I don't recall his  
9 name.

10 He would send me -- you know, we'd fax back and  
11 forth things, and do the messengering and things. But  
12 it would have all gone to John Silva's office.

13 Q. And I can represent to you -- and this was in --  
14 right.

15 So this was in 1991; correct?

16 A. Correct.

17 Q. So I can represent to you that in 1991 an entity  
18 existed called Nirvana, Inc.

19 Have you ever been employed by an entity called  
20 Nirvana, Inc.?

21 A. No.

22 Q. And have you ever received any employment  
23 benefits from a company called Nirvana, Inc.?

24 A. No.

25 Q. Have you received any compensation from a

1 company called Nirvana, Inc., at all?

2 A. No.

3 Q. We've been going for about an hour. I'm okay,  
4 but are you okay or would you like a break?

5 A. I'm still good. Thanks.

6 Q. Okay.

7 MR. ZINNA: So we can pull Exhibit 7 down now,  
8 please, Gina.

9 And if you could put Exhibit 4 back up next to  
10 Exhibit 6. Page 1.

11 Thank you.

12 BY MR. ZINNA:

13 Q. Is there a written agreement signed by you and  
14 Geffen that would state that the smiley face here is a  
15 work for hire?

16 A. No.

17 Q. Is there a written agreement signed by you and  
18 Nirvana, Inc., stating that this agreement -- this  
19 smiley face is a work for hire?

20 A. No.

21 Q. Is there any written agreement signed by you,  
22 whether or not signed by anyone else, that states that  
23 this smiley face is a work for hire?

24 A. No.

25 Q. Okay.

1 MR. ZINNA: We can pull these down, please,  
2 Gina.

3 And I'd like to go back to Exhibit 3.

4 Okay.

5 BY MR. ZINNA:

6 Q. Looking back at Exhibit 3, Mr. Fisher, do you  
7 know who created the text portion of the T-shirt on the  
8 front of the shirt, "Nirvana," in stylized typeface?

9 A. That would be me.

10 Q. And so explain that to me, the creation of that.

11 A. Well, that was the current logo that Nirvana was  
12 using from their first album. It's a BT Onyx font.

13 Q. So maybe you misunderstood my question.

14 I'm asking not who made the decision to put the  
15 word "Nirvana" there above that smiley face. Who  
16 actually created that word in that font?

17 A. Well, I would have typeset that, if that's what  
18 you're asking.

19 Q. It is.

20 A. To put -- yeah, I would have typeset that and  
21 chose to put it there at that size, in that color.

22 Q. Would you have chosen -- would you have been the  
23 person who originally chose the font?

24 A. It was up to my discretion, I believe. But that  
25 was the logo they were using, so I figured we'd keep

1 using it at that point.

2 Q. So when you say "the logo they were using," the  
3 word "Nirvana" in that typeface was originally created  
4 by someone else and then you used it in that typeface  
5 for this T-shirt; is that correct?

6 A. Correct. They used it on their first album,  
7 Bleach, and then on the shirt that we were kind of doing  
8 a play off on, they used it on that as well.

9 But I believe they -- on that shirt they have  
10 the N's upside down, so I put them back the right way to  
11 use it here.

12 Q. And so do you know who originally create --  
13 decided to create the word in that font?

14 A. I'm not sure.

15 Q. Krist Novoselic testified in his deposition that  
16 it was Tam Ohrmund.

17 Is that a name that's familiar to you?

18 A. Not really.

19 Q. Do you know -- have you ever heard that name  
20 before?

21 A. It -- in the back of my head a little familiar,  
22 but I couldn't say for sure.

23 Q. But would you have any reason to believe that  
24 Mr. Novoselic's testimony is incorrect?

25 A. No.

1 Q. And you've never -- you've never communicated  
2 with Ms. Ohrmund; is that correct?

3 A. No.

4 Q. Okay. Continuing on with Exhibit 3, do you know  
5 who created the text portion on the back of the T-shirt,  
6 Flower Sniffin, Kitty Pettin, Baby Kissin, Corporate  
7 Rock Whores?

8 A. What do you mean by creating it?

9 Q. Do you know who coined the phrase?

10 A. I do not know.

11 Q. Do you know when it was coined?

12 A. Sometime before they asked me to create the  
13 shirt.

14 Q. And how did you come to decide to use that  
15 phrase here?

16 A. It was given to me to use. It was a play off on  
17 the previous tour shirt.

18 Q. Given to you by whom?

19 A. I'm not sure. If I'm guessing, it would have  
20 been Nirvana management, probably.

21 Q. But it was someone who was either in Nirvana or  
22 a representative of Nirvana; is that correct?

23 A. Yes.

24 MR. ZINNA: Gina, will you please leave this  
25 document up but also pull up Page 2 of Exhibit 5.



1 Thank you.

2 BY MR. ZINNA:

3 Q. So we already read sentence -- the first  
4 sentence of Paragraph 3 into the record, but just for  
5 continuity, Mr. Fisher, would you read the first and  
6 second sentence of Paragraph 3 into the record aloud.

7 A. Okay. Let me move this out of the way.

8 The second sentence?

9 Q. The first and second, please.

10 A. Okay. "In 1991, I created the Happy Face  
11 illustration that is at the heart of the litigation  
12 between Nirvana and Marc Jacobs. I also did the graphic  
13 design for the Happy Face t-shirt."

14 Q. Thank you.

15 And so is the graphic design for the happy face  
16 T-shirt that you reference here what I have been calling  
17 the T-shirt design, which is shown on Page 24 of the  
18 Complaint, in Exhibit 3?

19 A. Yes, the graphic design. That would be laying  
20 it all out, the sizing, the colors.

21 Q. Uh-huh.

22 A. The fonts on the back, and, you know, the -- you  
23 can call it --

24 Q. Right.

25 A. -- graphic design.



1 Q. And by "T-shirt design," you'll recall I said I  
2 mean, you know, the graphics and the text together,  
3 everything.

4 A. Yes. I put that all together.

5 Q. Okay.

6 MR. ZINNA: Gina, you can pull these down.

7 And please pull up Tab H, as in home, and mark  
8 it as Exhibit 9.

9 (Exhibit 9 was marked for identification.)

10 MR. ZINNA: Thank you.

11 BY MR. ZINNA:

12 Q. So, Mr. Fisher, I'm showing you a document  
13 that's been marked as Exhibit 9, which was produced by  
14 you in response to the defendants' Subpoena.

15 Have you seen this document before?

16 A. Yes.

17 Q. What is it?

18 A. That is one of the 1,400 shirts that was ordered  
19 that I -- that I received as a sample.

20 Q. So those are the 1,400 shirts that you said, I  
21 think, were referenced in Exhibit 7 on that handwritten  
22 note; correct?

23 A. If 7 is, like, the print order and that, yes.

24 Q. It is. So, thank you.

25 And are you in possession of the T-shirt in

1 these pictures?

2 A. Yes.

3 Q. And when did you come into possession of that  
4 T-shirt?

5 A. When they were printed, which would have been  
6 after that one date on the note. I'm not -- I'm not  
7 sure how long the printing time was, but since it was a  
8 small run, I'm sure it was pretty fast.

9 Q. And have you had it in your possession since  
10 then?

11 A. Yes. Again, in a box.

12 Q. And did you take this photo?

13 A. Yes.

14 Q. And is this the T-shirt design that you created?

15 A. Yes.

16 MR. ZINNA: Can we see the next page, please,  
17 Gina.

18 BY MR. ZINNA:

19 Q. So do Page 1 and Page 2 of this exhibit,  
20 Mr. Fisher, represent the full T-shirt design that you  
21 created?

22 A. Yes. With the addition of the logo on the  
23 sleeve.

24 Q. And is this the T-shirt design that we also have  
25 been referencing back to in Exhibit 3?

1 A. Well, this is -- this is -- which was Exhibit 3  
2 again?

3 MR. ZINNA: Can we see Exhibit 3, please, Gina.

4 THE WITNESS: Well, that one would be a  
5 different version of it.

6 MR. ZINNA: Right.

7 BY MR. ZINNA:

8 Q. In the sense that that's a different T-shirt.

9 But is it the same design, the same T-shirt  
10 design?

11 A. Except for the logo on the sleeve, yes.

12 Q. And where was this --

13 MR. ZINNA: You can pull Exhibit 4 down, Gina.

14 Thank you.

15 BY MR. ZINNA:

16 Q. Where was the T-shirt design created?

17 A. Probably at Geffen.

18 Q. And so what do you mean by "at Geffen"?

19 A. Well, in my office at Geffen Records.

20 Q. Was anyone present with you when you created it?

21 A. Well, I couldn't tell you. I don't know. I  
22 don't remember.

23 Q. And what did you use to create it? Can you walk  
24 me through the process?

25 A. Well, that was the Xerox machine. I'm not sure

1 about the typesetting, if we -- it's right around the  
2 time we started using computers, but really only for  
3 typesetting.

4 So I'm not sure if I had the -- yeah, I probably  
5 would have just done it on the computer and printed it  
6 out, and then used the Xerox copy and cut it out, and  
7 made the boards or the mechanicals, as we called them.

8 Q. And did anyone at Nirvana, Inc., give you any of  
9 the materials that you used to create this T-shirt  
10 design?

11 A. Not the materials, no.

12 Q. How long did it take you to create the T-shirt  
13 design?

14 A. Like after the happy face was done?

15 Q. Yes.

16 So how -- so how did it -- how long did it take  
17 you to create the full design of this T-shirt?

18 A. I'm not really sure. I do remember that there  
19 was some change on the copy on the back. Like, maybe,  
20 the "corporate rock whores" I did one way first and then  
21 they asked -- they changed the wording a bit or  
22 something. But -- so it could have been a day or so.

23 Q. And did someone ask you to create it?

24 A. To create the shirt?

25 Q. Yes.

1 Q. And you mentioned earlier that you delivered the  
2 design to someone associated with Nirvana, but I think  
3 at that point we were talking just about the smiley  
4 face.

5 So did you also deliver the whole design of this  
6 T-shirt to them?

7 A. Yes. I would have -- I would have done a  
8 mock-up and probably sent that -- sent them that to  
9 approve.

10 And then once they said yes, then I would have  
11 made a full-size mechanical of it, you know, with the  
12 tracing paper and called out the colors, and then sent  
13 them that, or if they would have directed me to send it  
14 to a printer that they were using to make theirs.

15 Q. And do you recall who exactly at Nirvana you  
16 would have sent it to?

17 A. Again, I would guess John Silva or his  
18 assistant.

19 Q. And would the -- would the order for the 1,400  
20 shirts have been made and completed if it had not been  
21 approved by Nirvana or their management?

22 A. No. They would -- the -- their management would  
23 always have to approve it before it was used elsewhere.  
24 If it's going to represent the band, they would approve  
25 it.

1 question or --

2 MR. ZINNA: Okay. I can --

3 THE WITNESS: Did someone tell me what art to  
4 use on it or something?

5 BY MR. ZINNA:

6 Q. Well, let's go there.

7 Did anyone tell you what art to use on it?

8 A. Well, if, say, you were working with a band and  
9 they wanted -- they would maybe put their album cover on  
10 it. So you would just, you know, have to size the art  
11 and, you know, prepare all the files, or if it just --  
12 you know, something like that.

13 Q. And the T-shirt design that we're looking at  
14 here in Exhibit 3, did anyone suggest changes to this  
15 design to you?

16 A. As I said earlier, I have a vague memory of  
17 something in the copy changing at one point. They just  
18 redid the wording on one of the phrases on the back. I  
19 don't remember what, though. I just have a really vague  
20 memory of that, having to change it.

21 Q. Any changes suggested to the smiley face only?

22 A. No. I think they liked and approved it first  
23 try.

24 Q. And did anyone have final approval over the  
25 final design of this T-shirt other than you?

1 A. It would have been Nirvana.

2 Q. And Geffen wasn't a T-shirt manufacturer; right?

3 A. No.

4 Q. So, as you understand it, creating T-shirts was  
5 not like an integral part of Geffen's business during  
6 this time frame; is that correct?

7 A. Correct.

8 Q. Do you know if T-shirts would be -- the  
9 manufacturing of T-shirts would be outsourced by Geffen  
10 to vendors?

11 A. The printing part or --

12 Q. Well, any part of the process of manufacturing.

13 A. Well, the shirts -- the printing would have  
14 been.

15 Q. Anything else you can think of?

16 A. No.

17 Q. And, now, thinking about this full T-shirt  
18 design, as distinct from when I asked you this question  
19 in a slightly different way before and it was just about  
20 the smiley face, is there any written agreement signed  
21 by Geffen and you that states that the T-shirt design is  
22 a work made for hire?

23 A. No.

24 Q. Is there any agreement between Nirvana, Inc.,  
25 and you that states that the T-shirt design is a work



1 made for hire?

2 A. No.

3 Q. Is there any agreement signed by you, whether  
4 signed by any other party, that states that the T-shirt  
5 design is a work made for hire?

6 A. No.

7 Q. And thinking back to 1991, at the time when you  
8 created the smiley face and the T-shirt design, was it  
9 easy for members of the band Nirvana or their management  
10 to get in touch with you?

11 A. Yes.

12 Q. I mean, you were basically just, I don't know, a  
13 phone call away probably; correct?

14 A. Yes. Or a fax.

15 Q. In those days, I guess, yeah.

16 A. Okay.

17 Q. And do you post content on Instagram at the  
18 handle @NirvanaBucket?

19 A. Yes.

20 Q. And are you aware that Dave Grohl's official  
21 Instagram account follows that account?

22 A. Oh, I didn't know. No.

23 MR. ZINNA: Gina, can you pull Tab K, and mark  
24 it as Exhibit 10. K, as in Karen.

25 (Exhibit 10 was marked for identification.)



1 you have in your possession?

2 A. Yes.

3 Q. Did you wear this T-shirt?

4 A. A bit, yes. You can tell.

5 Q. Did you use it for anything else?

6 A. That was the reference shirt that I based the  
7 smiley face shirt off of.

8 Q. So --

9 A. So I would have -- I would have referred to this  
10 shirt when creating the smiley face design.

11 Q. And so how did you do that? Could you walk me  
12 through that process?

13 A. Well, they -- this is the shirt that they  
14 asked that I -- we want -- they wanted to make a  
15 different version, as I said.

16 When they provided me the other copy, they  
17 wanted to do like a less explicit -- you know, the copy  
18 on the back, if you could show the other side, but --  
19 because this was a shirt that they sold on tour, and so  
20 I was given this as kind of the direction to make  
21 something funny that would, you know -- that they could  
22 use.

23 Q. Uh-huh. And I know you testified that you  
24 didn't create the saying that's on the back of the  
25 T-shirt design that you did create, but do you consider

1 using the word "whores," which is on that T-shirt, less  
2 inflammatory than, say, "fudge packin" or  
3 "motherfuckers"?

4 MR. DEIXLER: Objection. It's irrelevant. No  
5 foundation.

6 THE WITNESS: Well, "corporate rock whores,"  
7 it's more of a joke. Where this -- this is a little --  
8 you know, it has Dante's Inferno, Nine Rings of Hell,  
9 it's a little more sinister, where the other one was  
10 obviously more of a joke.

11 BY MR. ZINNA:

12 Q. So -- so --

13 A. I wouldn't -- I wouldn't say whores is -- I  
14 mean, I wouldn't use it now, but back then, it was -- it  
15 wasn't as -- it was way less explicit than this on the  
16 back.

17 Q. And so thinking about, you've called that  
18 saying, it was a bit of a joke, you mean like tongue in  
19 cheek almost?

20 A. Yes.

21 Q. And so did that concept of a joke or tongue in  
22 cheek help inform your design of the smiley face?

23 A. Yes.

24 Q. And how so?

25 A. Well, it -- I wanted to do something almost like

1 completely opposite, you know, the Rings of Hell,  
2 Dante's Inferno or whatever, so I wanted to do something  
3 really light and funny. So that's what -- how I kind of  
4 came up with the smiley face.

5 And then it being so tongue in cheek, that's why  
6 I put the tongue on the side, kind of on the cheek, as a  
7 little nod to tongue in cheek.

8 Q. Did you use this T-shirt for anything else?

9 A. No.

10 MR. ZINNA: Okay. Gina, if you could, please,  
11 pull Tab M, and mark it as Exhibit 18.

12 (Exhibit 18 was marked for identification.)

13 BY MR. ZINNA:

14 Q. So, Mr. Fisher, I'm now showing you what's been  
15 marked as Exhibit 18, which is a document that you  
16 produced in response to the Subpoena that the defendants  
17 served on you in this case.

18 Have you seen this document before?

19 A. Yes.

20 Q. What is it?

21 A. This is one of the budget sheets that I would  
22 have filled out when I began working with Nirvana. When  
23 we first started, the album was titled Sheep before it  
24 was changed to Nevermind.

25 Q. And what would this -- what would this document

1 to come off as someone that, you know, is suing people  
2 all the time or -- but I just felt I needed to stand up  
3 for my rights.

4 Q. But in doing that, I mean, there's not a lot of  
5 upside to that for you; is that correct?

6 A. I'm -- I don't know for sure anything about  
7 that.

8 Q. Yeah. I mean, do you feel that you have  
9 something to lose by doing this, not just something to  
10 gain?

11 A. It's possible.

12 Q. Is there anything else that we haven't discussed  
13 that you think causes you to be in a precarious  
14 situation over this?

15 A. Well, I've been working with Nirvana for 30  
16 years doing all their art and design, and --

17 Q. So --

18 A. -- I would guess this is going to put a rift  
19 between us.

20 Q. You probably wouldn't be making -- you probably  
21 wouldn't make a rash decision to do something like that.

22 A. No. I had -- I had to think long and hard about  
23 this.

24 Q. Ultimately, you just feel like you have to  
25 possibly stand up for your rights; correct?

1 STATE OF CALIFORNIA )

2 COUNTY OF LOS ANGELES )

3 I, ROSEMARY LOCKLEAR, a Certified Shorthand  
4 Reporter of the State of California, duly authorized to  
5 administer oaths pursuant to Section 2025 of the  
6 California Code of Civil Procedure, do hereby certify  
7 that

8 ROBERT ANDRES FISHER, the witness in the  
9 foregoing deposition, was by me duly remotely sworn to  
10 testify the truth, the whole truth and nothing but the  
11 truth in the within-entitled cause; that said testimony  
12 of said witness was stenographically reported by me, a  
13 disinterested person, and was thereafter transcribed  
14 under my direction into typewriting and is a true and  
15 correct transcription of said proceedings, to the best  
16 of my ability.

17 I DO FURTHER CERTIFY that I am neither a  
18 relative nor employee nor attorney nor counsel of any of  
19 the parties to this action, and that I am neither a  
20 relative nor employee of such attorney or counsel, and  
21 that I am not financially interested in the action.

22  
23 

24 ROSEMARY LOCKLEAR, RPR, CRR, CSR 13969

25 Dated:

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the Errata Sheet for any corrections that are made.

After doing so, please sign the Errata Sheet and date it.

You are signing same subject to the changes you have noted on the Errata Sheet, which will be attached to your deposition.

It is imperative that you return the original Errata Sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

1 E R R A T A

2 - - - - -

3

4 PAGE LINE CHANGE

5 \_\_\_\_\_

6 REASON: \_\_\_\_\_

7

8 PAGE LINE CHANGE

9 \_\_\_\_\_

10 REASON: \_\_\_\_\_

11

12 PAGE LINE CHANGE

13 \_\_\_\_\_

14 REASON: \_\_\_\_\_

15

16 PAGE LINE CHANGE

17 \_\_\_\_\_

18 REASON: \_\_\_\_\_

19

20 PAGE LINE CHANGE

21 \_\_\_\_\_

22 REASON: \_\_\_\_\_

23

24

25

ACKNOWLEDGEMENT OF DEPONENT

I, \_\_\_\_\_, do hereby certify  
that I have read the foregoing pages, and that the same  
is a correct transcription of the answers given by me to  
the questions therein propounded, except for the  
corrections or changes in form or substance, if any,  
noted in the attached Errata Sheet.

\_\_\_\_\_  
ROBERT ANDRES FISHER

\_\_\_\_\_  
DATE

Subscribed and sworn  
to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



1	LAWYER'S NOTES		
2	PAGE	LINE	
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25	_____	_____	_____